

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
IN RE STATE STREET BANK AND TRUST :  
CO. ERISA LITIGATION :  
 :  
 : 07 Civ. 8488 (RJH)  
This document relates to: :  
 :  
07 Civ. 8488 (*Prudential Retirement Insurance and* :  
*Annuity Company v. State Street Bank and Trust* :  
*Company and State Street Global Advisors, Inc.*) :  
 :  
----- X

**DECLARATION OF MATTHEW D. SIEGEL  
IN OPPOSITION TO DEFENDANTS' MOTION  
TO DISMISS OR FOR SUMMARY JUDGMENT**

I, Matthew D. Siegel, hereby declare as follows:

1. I am an attorney admitted to practice in New York. I am a member of the bar of this Court and am associated with the firm of Debevoise & Plimpton LLP, which represents plaintiff Prudential Retirement Insurance and Annuity Company ("Prudential") in this action.

2. I submit this declaration to place before the Court certain documents relevant to Prudential's opposition to the motion by State Street Bank and Trust Company and State Street Global Advisors, Inc. (together, "State Street") to dismiss the Complaint, or in the alternative for summary judgment.

3. Attached as Exhibit A is a copy of an email sent by Sonya Hughes of State Street to Robert Frasca of Prudential on or about September 21, 2005, with an attachment to that email entitled "Summary of Changes to SSgA Commingled Funds."



4. Attached as Exhibit B is a copy of an email sent by Mark Flinn of State Street to Mr. Frasca on or about July 18, 2007.

5. Attached as Exhibit C is a copy of a loan agreement, dated as of October 17, 2007.

6. Attached as Exhibit D is a copy of a letter sent by Edwin G. Schallert of Debevoise & Plimpton LLP to Barry G. Sher of Paul, Hastings, Janofsky & Walker LLP on March 10, 2008.

7. Attached as Exhibit E is a table prepared by Prudential that lists each of the Plans (as that term is defined on page 1 of Prudential's Memorandum of Law in Opposition to Defendants' Motion to Dismiss or for Summary Judgment (the "Opposition")) that (i) were, on or about July 31, 2007, invested in one of the Bond Funds (as that term is defined on page 4 of the Opposition) and (ii) were, on or about September 30, 2007, still invested in Prudential separate accounts whose assets are managed by State Street. The Plans are identified by "Plan Number," rather than by name, to protect the confidentiality of Prudential's clients. The column titled "Total Fund \$AUM" shows the amount of each such Plan's assets that were, on or about September 30, 2007, invested in each respective Prudential separate account whose assets are managed by State Street.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed in New York, New York, on March 10, 2008.

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/s/ Matthew D. Siegel  
Matthew D. Siegel



**EXHIBIT A**



From: Sonya\_Hughes Sent: 2005-09-21 19:49:36:000  
Received: 2005-09-21 19:50:09:000  
To: robert.frascona  
Cc: Greg\_Mulready  
Bcc:  
Subject: SSgA Move to Class Shares

Hi Bob,

Per our conversation today I have attached a word document highlighting the changes being made to our funds. I hope this is helpful in answering any questions your team might have. I have also attached an excel file containing the new wire instructions to be used starting October 1, 2005.

I have also attached the Declaration of Trust (both a red lined and a clean copy) and Fund Declarations for each of the funds Prudential utilizes. If you would like to receive red lined versions of all Fund Declarations I would be happy to send those on to you as well so your legal team can review them if needed.

Please let me know if you have additional questions or would like to set up a call.

Again, I apologize for the confusion surrounding this change.

Regards,  
Sonya

(See attached file: Summary of Changes to SSgA Commingled Funds.doc)(See attached file: NEW WIRE INSTRUCTIONS.xls)(See attached file: ERISA\_4th Amend.pdf)(See attached file: STIF\_Amend\_\_SSGA 81-100 form of Fund Declaration (3).pdf.zip)(See attached file: 1v4Declaration\_DOT\_Tax Exempt\_Redline.doc.zip)

(See attached file: Passive Intermed. Bond Index SL Series Fund\_Class A.pdf)(See attached file: R1000 Growth Index SL Series Fund\_Amend\_CMH3.pdf)

(See attached file: R1000 Growth Index SL Series Fund\_Class A.pdf)(See attached file: R2000 Index SL Series Fund\_Amend\_CMH7.pdf)(See attached file: R2000 Index SL Series Fund\_Class A.pdf)

(See attached file: R3000 Index SL Series Fund\_Amend.pdf)(See attached



file: R3000 Index SL Series Fund\_Class A.pdf)(See attached file: S&P MidCap Index SL Series Fund\_Amend\_CM5B.pdf)(See attached file: S&P MidCap Index SL Series Fund\_Class A.pdf)(See attached file: Daily EAFE Index SL Series Fund\_Amend\_ZV3R.pdf)(See attached file: Daily EAFE Index SL Series Fund\_Class T.pdf)  
 (See attached file: Govt. Credit Bond NL Series Fund\_Amend\_CMB2\_SSGA 81-100 form of Fund Declaration\_07.28.05.pdf)(See attached file: Govt. Credit NL Series Fund\_Class A\_SSGA 81-100 Description of Classes.pdf)(See attached file: Passive Bond Market Index SL Series Fund\_Amend\_CME9.pdf)(See attached file: Passive Bond Market Index SL Series Fund\_Class A.pdf)(See attached file: Passive Intermed. Bond Index SL Series Fund\_Amend.pdf)

State Street Global Advisors  
 One Lincoln Street, 33rd Floor  
 Boston, MA 02111  
 sonya\_hughes@ssga.com  
 Ph: (617) 664-2930  
 Fax: (617) 664-6860

- Summary of Changes to SSgA Commingled Funds.doc
- NEW WIRE INSTRUCTIONS.xls
- ERISA\_4th Amend.pdf
- STIF\_Amend\_\_SSGA 81-100 form of Fund Declaration (3).pdf.zip
- 1v4Declaration\_DOT\_Tax Exempt\_Redline.doc.zip
- Passive Intermed. Bond Index SL Series Fund\_Class A.pdf
- R1000 Growth Index SL Series Fund\_Amend\_CMH3.pdf
- R1000 Growth Index SL Series Fund\_Class A.pdf
- R2000 Index SL Series Fund\_Amend\_CMH7.pdf
- R2000 Index SL Series Fund\_Class A.pdf
- R3000 Index SL Series Fund\_Amend.pdf
- R3000 Index SL Series Fund\_Class A.pdf
- S&P MidCap Index SL Series Fund\_Amend\_CM5B.pdf
- S&P MidCap Index SL Series Fund\_Class A.pdf
- Daily EAFE Index SL Series Fund\_Amend\_ZV3R.pdf
- Daily EAFE Index SL Series Fund\_Class T.pdf
- Govt. Credit Bond NL Series Fund\_Amend\_CMB2\_SSGA 81-100 form of Fund Declaration\_07.28.05.pdf
- Govt. Credit NL Series Fund\_Class A\_SSGA 81-100 Description of Classes.pdf
- Passive Bond Market Index SL Series Fund\_Amend\_CME9.pdf
- Passive Bond Market Index SL Series Fund\_Class A.pdf
- Passive Intermed. Bond Index SL Series Fund\_Amend.pdf



**Summary of Changes to SSgA Commingled Funds  
All Changes Effective October 1, 2005**

SSgA recently completed a comprehensive review of our ERISA Declaration of Trust and all underlying ERISA Commingled Fund Declarations. The purpose of the review was to harmonize and update our documents with respect to terminology, operational procedures and legal standards.

**In summary there were no changes made to the investment objectives or management of these funds. Changes made were to create operational efficiencies. The most important information to convey is that the wire instructions will change for some of the funds and should be updated in your systems for October 1, 2005.**

**Overall the majority of the changes made to the documents are minor; however there are two changes which will impact several of our commingled funds:**

**Series Funds to Class Share Structure**

Prudential Retirement accounts affected by this change are:

Government Credit Bond Fund Series A  
Russell 2000 Index Securities Lending Fund Series A  
Daily EAFE Securities Lending Fund Series T  
Intermediate Bond Securities Lending Fund Series A  
Passive Bond Market Index Securities Lending Fund Series A  
Russell 1000 Growth Index Securities Lending Fund Series A  
Russell 3000 Index Securities Lending Fund Series A  
S&P Mid Cap Index Securities Lending Fund Series A

- **All SSgA Fund Codes, Prudential Account Numbers, NAVs and units outstanding will remain the same**
- **The only major change to note are the NEW WIRE INSTRUCTIONS for the following funds:**

Daily EAFE Index SL Fund Series T  
Russell 2000 Index SL Fund Series A  
Passive Bond Market Index SL Fund Series A  
S&P Mid Cap Index SL Series A

I have attached the new instructions in a separate excel spreadsheet.

- **Minor Name Changes will occur:**

<u>Old Name</u>	<u>New Name Effective October 1, 2005</u>
Government Credit Bond Fund Series A	Government Credit Bond Non-Lending Series Fund - Class A
Russell 2000 Index Securities Lending Fund Series A	Russell 2000® Index Securities Lending Series Fund - Class A
Daily EAFE Securities Lending Fund Series T	Daily EAFE Securities Lending Series Fund - Class T
Intermediate Bond Securities Lending Fund Series A	Passive Intermediate Bond Index Securities Lending Series Fund - Class A
Passive Bond Market Index Securities Lending Fund Series A	Passive Bond Market Index Securities Lending Series Fund - Class A
Russell 1000 Growth Index Securities Lending Fund Series A	Russell 1000® Growth Index Securities Lending Series Fund - Class A
Russell 3000 Index Securities Lending Fund Series A	Russell 3000® Index Securities Lending Series Fund - Class A
S&P Mid Cap Index Securities Lending	S&P MidCap® Index Securities Lending



Fund Series A

Series Fund - Class A

**Fair Value Pricing for International Equity Funds**

Prudential Retirement accounts affected by this change are:

Daily EAFE Securities Lending Fund Series T

- **Fair Value Pricing will be implemented for all of our non-US equity commingled funds that accept trades daily.**

The effect of fair value pricing is that securities may not be priced on the basis of quotations from the primary market in which they are traded, but may be priced by another method that we believe reflects fair value. If we believe that a security's value has been materially affected by events occurring after the close of the exchange that security will be valued in accordance with our policies.



**EXHIBIT B**



Email Content

From: Mark Flinn Sent: 2007-07-18 21:56:57:000  
Received: 2007-07-18 21:57:02:000  
To: robert.frascona@prudential.com  
Cc:  
Bcc:  
Subject: FW: SSgA Fund Names and Codes

Hi Bob,

Per our discussion, I have reviewed the list of fund name changes that was previously sent in October 2005 and confirmed that the only correction needed was for the SSgA Intermediate Bond Fund. We inadvertently added "Passive" in the name of the SSgA Intermediate Bond Fund. I have corrected the name and attached an updated list of Funds that Prudential Retirement uses along with the Fund Declaration and Class Description for the SSgA Intermediate Bond Fund.

I am fairly open in the month of August and would love to come to Hartford to meet you and your team in person. Please let me know what date works best for you and I will put in the calendar.

Regards,

Mark

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Mark R. Flinn  
Relationship Manager - U.S. Sub-Advisory  
State Street Global Advisors  
State Street Financial Center  
One Lincoln Street, 33rd Floor  
Boston, MA 02111  
Tel. 617-664-2987  
Fax. 617-664-6860  
mark\_flinn@ssga.com  
Please visit us at:  
<http://www.ssga.com/subadvisory>

Securities offered through State Street Global Markets, LLC, member NASD, SIPC.

State Street Global Markets, LLC has a regulatory surveillance system designed to monitor and record incoming and outgoing email communications, including attachments.

This e-mail and any files transmitted with it are confidential to State Street Global Advisors (SSgA) and are intended solely for the use of the individual or entity to whom they are addressed. If you have received this e-mail in error, please reply to this message and let the sender know. <<SSgA Funds.xls>> <<Intermediate Bond NL Series Fund\_Class A\_Amend.pdf>> <<Intermediate Bond NL Series Fund\_2nd Amend\_CMH6.pdf>>

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The information contained in this transmission is confidential and proprietary. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, collect, and destroy the original message.

Registered Representative  
Prudential Investment Management Services LLC  
A Prudential Financial company  
Three Gateway Center, 14th Floor  
Newark, NJ 07102-4077  
Tel 973-802-8624



**EXHIBIT C**



Loan Agreement

This Agreement ("Loan Agreement"), dated as of October 17, 2007, is between Prudential Retirement Insurance and Annuity Company, acting in its individual capacity (in such capacity, "Lender") and Prudential Retirement Insurance and Annuity Company, acting on behalf of two Separate Accounts (as defined below) (in such capacity, "Borrower").

WHEREAS, Borrower established two separate accounts known as the "SSgA Intermediate Bond Fund" and the "SSgA Government Credit Bond Fund" (the "Separate Accounts"), and each Separate Account invested exclusively in a corresponding collective investment trust that was created by State Street Bank and Trust Company ("State Street") and that had an enhanced index bond strategy as an investment objective,

WHEREAS, Lender desires to make a series of loans aggregating not more than \$85,000,000 (the "Commitment Amount") to Borrower to enable Borrower, through the Separate Accounts, to offer to make payments ( "Redemption Payments") to qualified plan investors ("Investors") in respect of such Investors' losses arising from State Street's mismanagement of the enhanced index bond funds ("Investor Losses"), and to enable Borrower to pay associated attorneys fees and costs,

WHEREAS, Borrower has filed on behalf of the Separate Accounts a lawsuit against State Street, which lawsuit may be amended or supplemented by additional causes of action, claims and defendants (as so amended or supplemented, the "State Street Lawsuit") to recover the Investor Losses,

WHEREAS, Borrower has divided each Separate Account into a division (the "Borrowing Division") representing the obligations of the Separate Account to each Investor who signs an authorization form submitted by PRIAC (such Investor being an "Authorizing Investor"), which authorization form authorizes PRIAC to borrow an amount necessary to make a payment to the Authorizing Investor in respect of the State Street Lawsuit,

WHEREAS, Borrower wishes to borrow amounts necessary to make the Redemption Payments to the Authorizing Investors.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:



1. Loan Commitment, Disbursement and Terms.

- A. Loan Disbursement. Lender agrees from time to time, on any business day and upon reasonable notice, to disburse to Borrower a loan (each a "Loan") in an amount equal to (a) the aggregate Redemption Payments made by Borrower on that business day in respect of the Borrowing Division of each Separate Account plus (b) the attorneys fees and costs related to the State Street Lawsuit paid by or on behalf of the Separate Accounts on that business day; provided that the aggregate disbursements made under this Loan Agreement shall not exceed the Commitment Amount.
- B. Repayment. Borrower agrees, on behalf of the Borrowing Division of each Separate Account, to repay each Loan promptly following receipt of the Lawsuit Proceeds (as defined below). Borrower and Lender expressly acknowledge that the term of the loan will exceed sixty (60) days.
- C. Non Recourse Loans. Lender agrees that its rights against Borrower to seek or receive repayment of the Loans shall be limited exclusively to the portion of the proceeds (by judgment, settlement or otherwise, whether paid in whole or in part to Borrower or Investor), if any, of the State Street Lawsuit, including attorneys fees and costs (the "Lawsuit Proceeds") received by the Borrowing Division of each Separate Account, and Lender expressly agrees that it has no claim for payment under this Loan Agreement against any other assets of such Borrowing Divisions, or any other division of a Separate Account, other than the portion of the Lawsuit Proceeds allocated to such Borrowing Division. Further, Lender acknowledges that it has no security interest in the assets of any Separate Account, including the State Street Lawsuit or the Lawsuit Proceeds.
- D. No Interest Loan. The Loans shall not bear interest. No fees are payable to Lender hereunder.

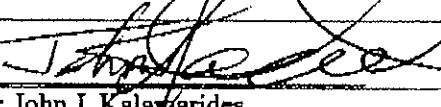
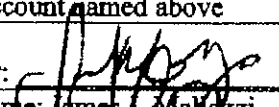
2. Miscellaneous Provisions

- A. Governing Law. This Loan Agreement shall be governed and construed in accordance with the laws of the State of New Jersey.
- B. Investors Not Liable to Repay Redemption Payment or Loans. Lender expressly acknowledges and agrees that no Authorizing Investor shall have any obligation whatsoever to re-pay any Redemption Payment received by the Authorizing Investor (except to the extent that the Authorizing Investor receives Lawsuit Proceeds). Lender further expressly acknowledges and agrees that no Authorizing Investor shall have any obligation to re-pay any Loan made to the Borrower on behalf of a Borrowing Division of a Separate Account (except to the extent that the Authorizing Investor receives Lawsuit Proceeds), it being expressly acknowledged by Lender that the Loan



repayment obligations hereunder are limited to the portion of the Lawsuit Proceeds received by the Borrowing Divisions.

IN WITNESS WHEREOF, each party has caused its duly authorized officer to sign this Loan Agreement as of the date hereof.

"LENDER"	"BORROWER"
Prudential Retirement Insurance and Annuity Company, acting in its individual capacity	Prudential Retirement Insurance and Annuity Company, acting on behalf of the Borrowing Division of each Separate Account named above
By: 	By: 
Name: John J. Kalamarides	Name: James J. Mallozzi
Title: Sr. Vice President	Title: Sr. Vice President



**EXHIBIT D**



DEBEVOISE & PLIMPTON LLP

919 Third Avenue  
New York, NY 10022  
Tel 212 909 6000  
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Edwin G. Schallert  
Partner  
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March 10, 2008

BY EMAIL

Barry G. Sher, Esq.  
Paul Hastings  
75 East 55th Street, 1st Floor  
New York, NY 10022

**Prudential v. State Street  
07 Civ. 8488 (RJH)**

Dear Barry:

In the course of finalizing Prudential's motion papers, we learned that certain of the information about numbers of plans in my letter to you of January 14, 2008 was inaccurate.

Prudential has identified 210 defined contribution or defined benefit plans that held investments in the Bond Fund separate accounts in and after 2005. (The 215 figure in my letter double-counted five plans that invested in multiple separate accounts.) Of these 210 plans:

- 192 were invested in the Bond Funds during the period between July 1, 2007 and the liquidation of the Bonds Funds. 190 of these plans returned signed authorization forms; two did not.
- The remaining 18 plans did not participate in the loan authorization process.

Because my letter of January 14 was submitted as part of State Street's motion papers, we will include this letter in our opposition papers.

Thank you for your attention to this matter.

Sincerely yours,



Edwin G. Schallert

22687736



**EXHIBIT E**



\* AUM Data as of 9/30/07

Plan Number	Separate Account Number	Fund Name	Total Fund SAUM
004628	5S6	State Street Global Advisors Passive Intermediate Bond Index SL A Fund	120,198,327
	5S7	State Street Global Advisors Passive Intermediate Aggregate Bond Index SL Fund	146,605,304
007900	5A1	State Street Global Advisors Daily EAFE SL Series Fund	20,865
	5A4	State Street Global Advisors Russell 3000 Index SL Series Fund	11,127
705096	5A1	State Street Global Advisors Daily EAFE SL Series Fund	451,169
	5A7	State Street Global Advisors Russell 2000 Index SL Series Fund	436,228
719775	5A4	State Street Global Advisors Russell 3000 Index SL Series Fund	705,089
719938	5A4	State Street Global Advisors Russell 3000 Index SL Series Fund	369,090
763038	5A4	State Street Global Advisors Russell 3000 Index SL Series Fund	1,408,878
763241	5A8	State Street Global Advisors S&P Mid Cap Index SL Series Fund	19,683
763264	5A4	State Street Global Advisors Russell 3000 Index SL Series Fund	74,191
763265	5A4	State Street Global Advisors Russell 3000 Index SL Series Fund	782,449
763613	5A4	State Street Global Advisors Russell 3000 Index SL Series Fund	146,280
763918	5A4	State Street Global Advisors Russell 3000 Index SL Series Fund	187,623
763929	5A4	State Street Global Advisors Russell 3000 Index SL Series Fund	1,975,990
764675	5A4	State Street Global Advisors Russell 3000 Index SL Series Fund	475,432
765622	5A1	State Street Global Advisors Daily EAFE SL Series Fund	247,119
	5A8	State Street Global Advisors S&P Mid Cap Index SL Series Fund	324,082
766223	5A4	State Street Global Advisors Russell 3000 Index SL Series Fund	7,146
766224	5A4	State Street Global Advisors Russell 3000 Index SL Series Fund	37,494
766460	5A4	State Street Global Advisors Russell 3000 Index SL Series Fund	6,449
766741	5A4	State Street Global Advisors Russell 3000 Index SL Series Fund	1,241,313
766888	5A4	State Street Global Advisors Russell 3000 Index SL Series Fund	239,540
766893	5A4	State Street Global Advisors Russell 3000 Index SL Series Fund	30,770
767175	5A4	State Street Global Advisors Russell 3000 Index SL Series Fund	392,761
767292	5A7	State Street Global Advisors Russell 2000 Index SL Series Fund	3,702,442
<b>Grand Total</b>			<b>280,096,841</b>